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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Sergio M. Morales,

Plaintiff,

vs.

Joseph M. Arpaio, et al.,

Defendants.

No. CV 13-1858-PHX-DGC (DKD)

**ORDER**

On September 10, 2013, Plaintiff Sergio M. Morales, who is confined in the Arizona State Prison Complex-Florence in Florence, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis* (Doc. 2). On October 3, 2013, prior to the Court's screening of Plaintiff's Complaint, Plaintiff filed a "Motion to Allow First Amended Complaint One Day Late" (Doc. 5), to which he attached a copy of the proposed First Amended Complaint (Doc. 5, Attach. 1). Plaintiff's Motion will be granted insofar as the First Amended Complaint supersedes the original Complaint in its entirety. The Court will dismiss the First Amended Complaint with leave to amend.

**I. Application to Proceed *In Forma Pauperis* and Filing Fee**

Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$10.49. The remainder of the fee will be collected monthly in payments of 20% of the previous month's income each time the

1 amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a  
 2 separate Order requiring the appropriate government agency to collect and forward the  
 3 fees according to the statutory formula.

## 4 **II. Statutory Screening of Prisoner Complaints**

5 The Court is required to screen complaints brought by prisoners seeking relief  
 6 against a governmental entity or an officer or an employee of a governmental entity. 28  
 7 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff  
 8 has raised claims that are legally frivolous or malicious, that fail to state a claim upon  
 9 which relief may be granted, or that seek monetary relief from a defendant who is  
 10 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

11 A pleading must contain a “short and plain statement of the claim *showing* that the  
 12 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8  
 13 does not demand detailed factual allegations, “it demands more than an unadorned, the-  
 14 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
 15 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
 16 conclusory statements, do not suffice.” *Id.*

17 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
 18 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
 19 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual  
 20 content that allows the court to draw the reasonable inference that the defendant is liable  
 21 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible  
 22 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw  
 23 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s  
 24 specific factual allegations may be consistent with a constitutional claim, a court must  
 25 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*  
 26 at 681.

27 But as the United States Court of Appeals for the Ninth Circuit has instructed,  
 28 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,

1 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less  
2 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*  
3 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

4 If the Court determines that a pleading could be cured by the allegation of other  
5 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal  
6 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The  
7 Court should not, however, advise the litigant how to cure the defects. This type of  
8 advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v.*  
9 *Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n.13 (declining to  
10 decide whether the court was required to inform a litigant of deficiencies). The Court  
11 will dismiss Plaintiff’s First Amended Complaint for failure to state a claim, but because  
12 the First Amended Complaint may possibly be saved by amendment, will dismiss the  
13 First Amended Complaint with leave to amend.

### 14 **III. First Amended Complaint**

15 Plaintiff asserts two counts of excessive force and denial of constitutionally  
16 adequate medical care. He names as Defendants Maricopa County Sheriff Arpaio and  
17 Fourth Avenue Jail Detention Officer Graffious.

18 In Count I, Plaintiff asserts that he has been diagnosed with bipolar schizophrenia  
19 and was being held in the Fourth Avenue Jail in Phoenix, Arizona on July 26, 2013.  
20 Around 5:49 p.m. that day, Plaintiff was “absent his prescribed medication,” Risperdal  
21 and Valproic Acid, and heard voices. Plaintiff “lost contact with the environment around  
22 him causing him fear under dementia.” Plaintiff exited the jail cell to get away from the  
23 voices, and he alleges that he was “thrown spread eagle to the floor by 4 to 5 [Detention  
24 Officers] and was then repeatedly punched in the face by Defendant Graffious until [his]  
25 nose fractured.” Plaintiff states that he suffers permanent, noticeable damage to his nose,  
26 that he cannot breathe through his nose without difficulty, that his senses of smell and  
27 taste have been negatively altered, and he suffers headaches because of the incident.  
28

1 In Count II, Plaintiff states that “immediately after this beating, [he] was taken for  
2 x-rays and his nose fracture was confirmed.” Plaintiff alleges that his nose “was never  
3 fixed by the 4<sup>th</sup> Avenue Jail[’]s medical staff,” resulting in permanent noticeable damage.

4 Plaintiff seeks compensatory and punitive damages, attorney’s fees, and court  
5 costs.

#### 6 **IV. Failure to State a Claim**

7 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the  
8 conduct about which he complains was committed by a person acting under the color of  
9 state law and (2) deprived him of a federal constitutional or statutory right. *Wood v.*  
10 *Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989). A plaintiff must also allege that he  
11 suffered a specific injury as a result of the conduct of a particular defendant and he must  
12 allege an affirmative link between the injury and the conduct of that defendant. *Rizzo v.*  
13 *Goode*, 423 U.S. 362, 371-72, 377 (1976).

##### 14 **A. Sheriff Arpaio**

15 Plaintiff sues Maricopa County Sheriff Arpaio. While Arpaio may be sued for  
16 constitutional violations, Plaintiff fails to state a claim against him. “A plaintiff must  
17 allege facts, not simply conclusions, that show that an individual was personally involved  
18 in the deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th  
19 Cir. 1998). For an individual to be liable in his official capacity, a plaintiff must allege  
20 that the official acted as a result of a policy, practice, or custom. *See Cortez v. County of*  
21 *Los Angeles*, 294 F.3d 1186, 1188 (9th Cir. 2001). Further, there is no *respondeat*  
22 *superior* liability under § 1983, so a defendant’s position as the supervisor of someone  
23 who allegedly violated a plaintiff’s constitutional rights does not make him liable.  
24 *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Taylor v. List*, 880 F.2d 1040,  
25 1045 (9th Cir. 1989). A supervisor in his individual capacity “is only liable for  
26 constitutional violations of his subordinates if the supervisor participated in or directed  
27 the violations, or knew of the violations and failed to act to prevent them.” *Taylor*, 880  
28 F.2d at 1045.

1 Plaintiff fails to allege any facts against Arpaio except to state in Count I that  
 2 Defendant Graffious “under the direction of Sheriff Joseph M. Arpaio along with 4 to 5  
 3 other Detention Officers whom Plaintiff is unable to identify at this time were responsible  
 4 for breaking Plaintiff’s nose.” In Count II, Plaintiff alleges that “several detention  
 5 officers, under the command of Sheriff Joseph M. Arpaio, the Defendant, held Plaintiff  
 6 down and repeatedly punch Plaintiff’s nose until it fractured.” Such conclusory  
 7 allegations are insufficient to state a claim. First, it is not clear whether Arpaio was  
 8 actually present at the Fourth Avenue Jail and directing Defendant Graffious and others  
 9 to take Plaintiff down and punch him or whether Plaintiff is predicated liability on a  
 10 theory of *respondeat superior*. Further, Plaintiff has not alleged facts to support that  
 11 Arpaio directly violated his constitutional rights or that Arpaio was aware that Plaintiff’s  
 12 rights were being violated but failed to act. Finally, Plaintiff has not alleged facts to  
 13 support that Arpaio enacted or enforced a policy, custom, or practice that resulted in the  
 14 denial of Plaintiff’s constitutional rights. Accordingly, Plaintiff fails to state a claim  
 15 against Arpaio and he will be dismissed.

#### 16 **B. Excessive Force**

17 The Fourteenth Amendment Due Process clause, not the Eighth Amendment,  
 18 protects pretrial detainees from excessive force that amounts to punishment. *Gibson v.*  
 19 *County of Washoe*, 290 F.3d 1175, 1197 (9th Cir. 2002). “[T]he Fourth Amendment sets  
 20 the ‘applicable constitutional limitations’ for considering claims of excessive force during  
 21 pretrial detention.” *Id.* (quoting *Pierce v. Multnomah County*, 76 F.3d 1032, 1043 (9th  
 22 Cir. 1996).

23 The Fourth Amendment does not prohibit the use of reasonable force. *Tatum v.*  
 24 *City & County of San Francisco*, 441 F.3d 1090, 1095 (9th Cir. 2006). Whether the force  
 25 was excessive depends on “whether the officers’ actions [were] ‘objectively reasonable’  
 26 in light of the facts and circumstances confronting them, without regard to their  
 27 underlying intent or motivation.” *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Tatum*,  
 28 441 F.3d at 1095; *Lolli v. County of Orange*, 351 F.3d 410, 415 (9th Cir. 2003). The

1 Court must balance the nature and quality of the intrusion against the countervailing  
2 governmental interests at stake. *Graham*, 490 U.S. at 396; *Lolli*, 351 F.3d at 415.

3 Moreover,

4 [t]he “reasonableness” of a particular use of force must be  
5 judged from the perspective of a reasonable officer on the  
6 scene, rather than with the 20/20 vision of hindsight. . . .

7 “Not every push or shove, even if it may later seem  
8 unnecessary in the peace of a judge’s chambers,” violates the  
9 Fourth Amendment.

10 *Graham*, 490 U.S. at 396 (citations omitted).

11 Plaintiff fails to allege sufficient facts to support that the amount of force allegedly  
12 used by Defendant Graffious was objectively unreasonable under the circumstances. For  
13 instance, Plaintiff does not state whether he was complying with any orders given by the  
14 officers, threatening any of them, or generally resisting them. For these reasons, Plaintiff  
15 fails to state a claim for excessive force under the circumstances, and Count I and  
16 Defendant Graffious will be dismissed.

### 17 **C. Medical Care**

18 Plaintiff designates Count II as a claim for denial of medical care. However,  
19 Plaintiff fails to identify any named Defendant as responsible for the alleged deprivation.  
20 Accordingly, Count II will be dismissed.

21 Plaintiff is advised that not every claim by a prisoner relating to inadequate  
22 medical treatment states a violation of the Eighth or Fourteenth Amendment. To state a  
23 § 1983 medical claim, a plaintiff must show that the defendants acted with “deliberate  
24 indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.  
25 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). A plaintiff must show (1) a  
26 “serious medical need” by demonstrating that failure to treat the condition could result in  
27 further significant injury or the unnecessary and wanton infliction of pain and (2) the  
28 defendant’s response was deliberately indifferent. *Jett*, 439 F.3d at 1096 (quotations  
omitted).

“Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d

1 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must  
 2 both know of and disregard an excessive risk to inmate health; “the official must both be  
 3 aware of facts from which the inference could be drawn that a substantial risk of serious  
 4 harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825,  
 5 837 (1994). Deliberate indifference in the medical context may be shown by a  
 6 purposeful act or failure to respond to a prisoner’s pain or possible medical need and  
 7 harm caused by the indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may  
 8 also be shown when a prison official intentionally denies, delays, or interferes with  
 9 medical treatment or by the way prison doctors respond to the prisoner’s medical needs.  
 10 *Estelle*, 429 U.S. at 104-05; *Jett*, 439 F.3d at 1096.

11 Deliberate indifference is a higher standard than negligence or lack of ordinary  
 12 due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor  
 13 gross negligence will constitute deliberate indifference.” *Clement v. California Dep’t of*  
 14 *Corrections*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter*  
 15 *Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or  
 16 “medical malpractice” do not support a claim under § 1983). “A difference of opinion  
 17 does not amount to deliberate indifference to [a plaintiff’s] serious medical needs.”  
 18 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care,  
 19 without more, is insufficient to state a claim against prison officials for deliberate  
 20 indifference. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407  
 21 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of  
 22 “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 105.

## 23 **V. Leave to Amend**

24 For the foregoing reasons, Plaintiff’s First Amended Complaint will be dismissed  
 25 for failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff  
 26 may submit a second amended complaint to cure the deficiencies outlined above. The  
 27 Clerk of Court will mail Plaintiff a court-approved form to use for filing a second  
 28



1 amended complaint. If Plaintiff fails to use the court-approved form, the Court may  
2 strike the amended complaint and dismiss this action without further notice to Plaintiff.

3 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements  
4 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name  
5 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to  
6 do; (4) how the action or inaction of that Defendant is connected to the violation of  
7 Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of  
8 that Defendant's conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

9 Plaintiff must repeat this process for each person he names as a Defendant. If  
10 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific  
11 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for  
12 failure to state a claim. **Conclusory allegations that a Defendant or group of**  
13 **Defendants has violated a constitutional right are not acceptable and will be**  
14 **dismissed.**

15 Plaintiff must clearly designate on the face of the document that it is the "Second  
16 Amended Complaint." The second amended complaint must be retyped or rewritten in  
17 its entirety on the court-approved form and may not incorporate any part of the original  
18 Complaint or First Amended Complaint by reference. Plaintiff may include only one  
19 claim per count.

20 A second amended complaint supersedes the original and first amended  
21 complaints. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios*  
22 *v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the  
23 Court will treat an original and first amended complaint as nonexistent. *Ferdik*, 963 F.2d  
24 at 1262. Any cause of action that was raised in the original or first amended complaint is  
25 waived if it is not raised in a second amended complaint. *King v. Atiyeh*, 814 F.2d 565,  
26 567 (9th Cir. 1987).

27 . . . .

28 . . . .



1 **VI. Warnings**

2 **A. Release**

3 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his  
4 release. Also, within 30 days of his release, he must either (1) notify the Court that he  
5 intends to pay the balance or (2) show good cause, in writing, why he cannot. Failure to  
6 comply may result in dismissal of this action.

7 **B. Address Changes**

8 Plaintiff must file and serve a notice of a change of address in accordance with  
9 Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion  
10 for other relief with a notice of change of address. Failure to comply may result in  
11 dismissal of this action.

12 **C. Copies**

13 Plaintiff must submit an additional copy of every filing for use by the Court. *See*  
14 LRCiv 5.4. Failure to comply may result in the filing being stricken without further  
15 notice to Plaintiff.

16 **D. Possible “Strike”**

17 Because the First Amended Complaint has been dismissed for failure to state a  
18 claim, if Plaintiff fails to file an amended complaint correcting the deficiencies identified  
19 in this Order, the dismissal may count as a “strike” under the “3-strikes” provision of 28  
20 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action  
21 or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has,  
22 on 3 or more prior occasions, while incarcerated or detained in any facility, brought an  
23 action or appeal in a court of the United States that was dismissed on the grounds that it is  
24 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the  
25 prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

26 **E. Possible Dismissal**

27 If Plaintiff fails to timely comply with every provision of this Order, including  
28 these warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963

1 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any  
2 order of the Court).

3 **IT IS ORDERED:**

4 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

5 (2) As required by the accompanying Order to the appropriate government  
6 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing  
7 fee of \$10.49.

8 (3) Plaintiff's "Motion to Allow First Amended Complaint One Day Late"  
9 (Doc. 5) is **granted** insofar as the First Amended Complaint supersedes the original  
10 Complaint in its entirety.

11 (4) The Clerk of Court must **separately file** the First Amended Complaint  
12 (Doc. 5, Attach. 1).

13 (5) The First Amended Complaint is **dismissed** for failure to state a claim.  
14 Plaintiff has **30 days** from the date this Order is filed to file a second amended complaint  
15 in compliance with this Order.

16 (6) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of  
17 Court must, without further notice, enter a judgment of dismissal of this action with  
18 prejudice that states that the dismissal may count as a "strike" under 28 U.S.C. § 1915(g).

19 (7) The Clerk of Court must mail Plaintiff a court-approved form for filing a  
20 civil rights complaint by a prisoner.

21 Dated this 4th day of November, 2013.

22  
23  
24 

25 \_\_\_\_\_  
26 David G. Campbell  
27 United States District Judge  
28

**Instructions for a Prisoner Filing a Civil Rights Complaint  
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing and Administrative Fees. The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed *in forma pauperis*. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$400 filing and administrative fees or the application to proceed *in forma pauperis* to:**

Phoenix & Prescott Divisions:  
U.S. District Court Clerk  
U.S. Courthouse, Suite 130  
401 West Washington Street, SPC 10  
Phoenix, Arizona 85003-2119

**OR**

Tucson Division:  
U.S. District Court Clerk  
U.S. Courthouse, Suite 1500  
405 West Congress Street  
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed *in forma pauperis*). Each original document (except the initial complaint and application to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. See Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed  
this \_\_\_\_\_ (month, day, year) to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Attorney for Defendant(s)

\_\_\_\_\_  
(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

**HEADING:**

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

**Part A. JURISDICTION:**

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “Bivens v. Six Unknown Federal Narcotics Agents” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

**Part B. PREVIOUS LAWSUITS:**

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

**Part C. CAUSE OF ACTION:**

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked "Other," you must identify the specific issue involved.
3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. Injury. State precisely how you were injured by the alleged violation of your rights.
5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. See 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

**Part D. REQUEST FOR RELIEF:**

Print the relief you are seeking in the space provided.

**SIGNATURE:**

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

**FINAL NOTE**

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

\_\_\_\_\_  
Name and Prisoner/Booking Number

\_\_\_\_\_  
Place of Confinement

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

**(Failure to notify the Court of your change of address may result in dismissal of this action.)**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

\_\_\_\_\_, )  
(Full Name of Plaintiff) Plaintiff, )

vs. )

**CASE NO.** \_\_\_\_\_  
(To be supplied by the Clerk)

(1) \_\_\_\_\_, )  
(Full Name of Defendant)

(2) \_\_\_\_\_, )

(3) \_\_\_\_\_, )

(4) \_\_\_\_\_, )

Defendant(s). )

☐ Check if there are additional Defendants and attach page 1-A listing them. )

**CIVIL RIGHTS COMPLAINT  
BY A PRISONER**

- ☐ Original Complaint  
☐ First Amended Complaint  
☐ Second Amended Complaint

**A. JURISDICTION**

1. This Court has jurisdiction over this action pursuant to:

☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).

☐ Other: \_\_\_\_\_.

2. Institution/city where violation occurred: \_\_\_\_\_.



## B. DEFENDANTS

1. Name of first Defendant: \_\_\_\_\_. The first Defendant is employed as:  
\_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title) (Institution)
2. Name of second Defendant: \_\_\_\_\_. The second Defendant is employed as:  
\_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title) (Institution)
3. Name of third Defendant: \_\_\_\_\_. The third Defendant is employed as:  
\_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title) (Institution)
4. Name of fourth Defendant: \_\_\_\_\_. The fourth Defendant is employed as:  
\_\_\_\_\_ at \_\_\_\_\_.  
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

## C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? \_\_\_\_\_. Describe the previous lawsuits:
  - a. First prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
  - b. Second prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
  - c. Third prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.







**E. REQUEST FOR RELIEF**

State the relief you are seeking:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF PLAINTIFF

\_\_\_\_\_  
(Name and title of paralegal, legal assistant, or  
other person who helped prepare this complaint)

\_\_\_\_\_  
(Signature of attorney, if any)

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\_\_\_\_\_  
(Attorney's address & telephone number)

**ADDITIONAL PAGES**

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.